HON'BLE SRI JUSTICE GODA RAGHURAM

W.P.NO. 23155 OF 2006

DATED: 8.11.2006

Between:

Arli Suri Babu

… Petitioner

and

The Commissioner of Endowments and others

… Respondents

HON'BLE SRI JUSTICE GODA RAGHURAM

W.P.NO.23155 OF 2006

ORAL ORDER:

The petitioner assails a tender-cum-auction notification issued by the 2nd respondent dated 22.10.2006 which is stated to have been published in Telugu daily press on 30.10.2006, notifying conduct of a tender-cum-auction on 8.11.2006 for grant of a licence to instal coffee and tea machine near the Centenary cottage, on the hills within the control and administration of the 3rd respondent-Devasthanam.

The petitioner is an existing licencee whose licence admittedly expires by 14.12.2006 in respect of the same business and at the same location. Since the petitioner's licence period was drawing to a close, the 2nd respondent issued the impugned tender-cum-auction notification scheduled on 8.11.2006 for granting a licence for the ensuing year commencing from 15.12.2006.

The petitioner assails the notification on two principal grounds:

a) that the notification has been published on 30.10.2006 contrary to the mandate of Rule 7 (2) of the A.P. Charitable and Hindu Religious Institutions and Endowments Immovable Properties and other rights (other than Agricultural lands) leases and Licenses Rules,

2003 (for short 'the Rules'); and

(b) the auction notification is in transgression of Rule 6 of the Rules.

Rule 7 of the Rules reads as under:

" (1) A copy of the auction notice shall be published in the language of the locality atleast ten days prior to the date fixed for auction, by affixture;

a) On the notice board or on the front door of the institution concerned, or in the case of a property belonging to a specific endowment, on the notice board or on the front door of the institution to which the property in question is attached.

b) On the notice board of the office of the municipality or gram panchayat within the limits of which the properties proposed to be leased out are situate; and

c) On the notice board of the office of the Asst. Commissioner having jurisdiction over the area in which the properties in question are situated.

(2) The contents of the auction notice shall be published:-

a) by beat of tom-tom in the inhabited area of gram panchayat in which the property is situated, and also by distributing pamphlets about the proposed auction.

b) By publication in the language of the locality in one of the local daily newspapers, if the transaction pertains to lease or license where the term exceeds the limits specified in sub-rule (2) (a) & (b) of rule-4;

Provided that the publication in the newspapers may be dispensed with by the competent authority, if he is satisfied that it is not viable considering the probable value of the lease."

The contention is that the publication on 30.10.2006 violates the mandate of Rule 7 (2) (b) of the Rules. On a true and fair construction

of Rule 7 (2) (b), a publication in the language of the locality in one of the local daily newspapers is required only if the transaction pertains to a lease or licence where the term exceeds the limits specified in Rule 4 (2) (a) and (b). Rule 4 (2) (a) and (b) prohibit leases or licences of immovable property for a period exceeding three years. In terms of Rule 7 (2) (b) of the Rules, since the licence is notified for a period of one year only, the requirement for publication in a language of the locality in a local daily newspaper does not appear imperative. Even otherwise, it is Rule 7 (1) which requires an auction notice to be published in the language of the locality at least 10 days prior to the date fixed for auction by affixture in the three modes specified in Rule 7 (1) (a) to (c). The requirement of publication of a notice 10 days prior to the date fixed for auction is only in respect of the affixtures specified in Rule 7 (1) (a) to (c) and does not extend to the additional modes of publication specified in Rule 7 (2). This interpretation is a compelling on the text and intent of the provisions of Rule 7. The petitioner's contention that the impugned tender-cum-auction notification is in transgression of Rule 7 of the Rules, does not therefore commend acceptance by this court.

Another contention is that the notification violates Rule 6. Rule 6 of the Rules requires the auction notice to inter alia specify:

(i) The period of lease or license.

(ii) The earnest money that should be deposited before participating in the auction.

(iii) The terms and conditions governing the lease or license.

(iv) The particulars of security to be furnished by the

successful bidder and the time within which such security should be furnished.

(v) Liability of the lessee or licensee on account of cancellation of auction or re-auction, if he:

a) fails to furnish the security and to execute the lease deed or deed of license within the time fixed;

b) commits default in the payment of rent; or

c) acts contrary to the terms and conditions of lease, license or against the interests of the property; institution or endowment:

(vi) That it shall not be open to the lessee or licensee to transfer the lease or license or to sub-lease or license the properties or the rights.

(vii) That the lessee or licensee shall execute the lease deed or deed of license in the forms specified by the Executive Authority;

(viii) That the lease or license shall be subject to the approval of the competent authority.

The petitioner contends that the several specifications mandated by Rule 6 do not find inclusion in the impugned notification. As is apparent, the impugned tender-cum-auction notification issued by the 3rd respondent specifies the location in respect of which the licence is to be issued; the amount of deposit and in which name the deposit should be made and the period for which the licence is to be granted. The impugned notification also specifies the date and time for issuance of the tender schedules; that the auction process is subject to

approval of the trust board and the Commissioner of Endowments and that the other particulars would be provided during office working hours.

The impugned tender notification, in the considered view of this court, is in substantial compliance with the provisions of Rule 6. The various aspects that Rule 6 requires to be specified in the auction notice are for the purpose of providing better information to intending bidders. This is taken care of by the impugned auction notification mentioning that any other particulars could be verified from the office. Since there is a substantial compliance with what appears to be directory specification of Rule 6, this court finds no infirmity in the impugned tender-cum-auction notification which visits the notification with a fatal infirmity, warranting invalidation.

In extremis, the learned counsel for the petitioner contends that the petitioner had entered upon the premises as a licencee an year back and has not done well commercially to recoup the licence fee paid. The economic well being of the petitioner, as it were on a commercial adventure is not the province of this court for adjudication and under Art. 226 of the Constitution. The petitioner also has a grievance that the respondents did not perform their reciprocal obligations under the licence. This is also not a matter for adjudication in this writ petition.

For the aforesaid reasons, this court finds no merits in the writ petition. The writ petition is dismissed. At this stage, the learned counsel for the petitioner states that the petitioner has made a

representation to the respondents for renewal and extension of licence period and seeks a direction from this court to the respondents to consider the said representation. In the absence of any entitlement of the petitioner and an obligation of the respondents established before the court, no mandamus can issue to direct the respondents to consider a mere representation of the petitioner. The respondents are always at liberty to consider any representation and to act on it in accordance with and within the limits of their discretion circumscribed by legislative mandate or statutory rules and not beyond such limitations. There shall be no order as to costs.

GODA RAGHURAM, J

Date: 8.11.2006
CVM